

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
TRI-POINT REALTY and CORBY ROBINSON
Rev. 11.4.2008

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
In re: TRI-POINT MORTGAGE Respondents: TRI-POINT REALTY d/b/a CRITERION REALTY, TRI-POINT MORTGAGE and TRI POINT PROPERTIES, a California-based entity, and CORBY WADE ROBINSON, individually and as owner of Tri-Point Realty.	
JOHN W. SUTHERS, Attorney General JAN MICHAEL ZAVISLAN, Deputy Attorney General JENNIFER MINER DETHMERS, Assistant Attorney General 1525 Sherman Street, 7 th Floor Denver, CO 80203 Phone: (303) 866-5079 Fax: (303) 866-4916 Email: jennifer.dethmers@state.co.us	
ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH TRI-POINT REALTY AND CORBY WADE ROBINSON	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General, Respondent Tri-Point Realty d/b/a Criterion Realty, Tri-Point Mortgage and Tri Point Properties and Respondent Corby Wade Robinson (collectively, "Respondents"). This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondents for the conduct described below.

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I. PARTIES

1. John W. Suthers is the duly elected Attorney General for the State of Colorado (“Attorney General”) and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), §§ 6-1-101, *et seq.*, C.R.S. (2008).

2. Respondent Tri-Point Realty, which does business as Criterion Realty, Tri-Point Mortgage and Tri Point Properties (collectively, “Tri-Point”), is not registered with either the California Secretary of State or the Colorado Secretary of State. Tri-Point’s principal place of business is 3414 Folsom Boulevard, Sacramento, California 95816. Tri-Point’s mailing address is 2851 Unity Point Avenue, Sacramento, California 95833. Upon information and belief, Tri-Point and its employees, independent contractors, brokers, salespersons, and agents originate residential mortgage loans as well as generate leads of consumers wishing to refinance their existing mortgage loans. Upon information and belief, the following salespersons are or have been affiliated with Tri-Point:

- a. Kevin Thaddeus Andrews, California License Number 01332246;
- b. Freddy Alberto Bermudez, California License Number 01448212;
- c. Kimberly L. Casjens, California License Number 01765963;
- d. Jeffrey Creighton Chadbourne, California License Number 01469872;
- e. Alicia Terese Cortez, California License Number 01797826;
- f. Mark A. Delatorre, California License Number 01424604;
- g. Jeremy Allen Dunmore, California License Number 01213314;

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- h. Ian David Essary, California License Number 01465092;
- i. Sorrel Hakanson Hebert, California License Number 01498040;
- j. Clinton Stradal Marsh, California License Number 01473292;
- k. Kevin Michael Seymour, California License Number 01359832;
- l. Gregory James Spallas, California License Number 01136958;
- m. Earnest Spencer, Jr., California License Number 01501810; and
- n. Douglas Samuel Tarpin, California License Number 01773341.

3. Respondent Corby Wade Robinson is a licensed broker with the State of California, License ID 01193510. Robinson is the owner of Tri-Point. Additionally, Robinson claims that he has had an employment and/or independent contractor relationship with Apex Mortgage ("Apex") located in Florida. Robinson originates mortgage loans for California consumers. Additionally, Robinson advertises and markets mortgages for residential properties in Colorado. Robinson understands and agrees that this Assurance shall apply to himself as well as any principals, officers, directors, agents, employees, representatives, loan officers, salespersons, mortgage brokers or originators, successors, affiliates, subsidiaries, assigns, independent contractors, and any person acting on behalf of himself or Tri-Point.

II. FACTUAL BACKGROUND

4. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the advertising activities of Respondents.

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5. The Attorney General contends that Colorado consumers contacted Robinson, Tri-Point and, perhaps, other individuals and salespersons affiliated with Tri-Point after receiving misleading and deceptive direct mail solicitations sent at Robinson's direction.

6. Robinson sent letters to Colorado consumers that appeared to be communications from the consumers' lenders. (*See* Ex. A.) In Exhibit A, the top of the direct mail solicitation contains the words "Loan Auditing Department" near the name of the consumer's lender. The consumer's lender, which was Bank of Colorado in Exhibit A, appears in large font in all capital letters in the upper right hand corner of the solicitation. (*Id.*)

7. Robinson asserts that he sent the letters as an employee or independent contractor of Apex, and that Apex approved this direct mail solicitation prior to him sending the letters to Colorado consumers. However, Respondents admit that Bank of Colorado never authorized Robinson, Tri-Point, or Apex to send any direct mail solicitations on its behalf.

8. Robinson did not indicate his or Tri-Point's address anywhere on the direct mail solicitation.

9. The direct mail solicitations appeared to come from the consumers' lenders when, in fact, the letters came from Respondents who were seeking to refinance the consumers' mortgage loans. As such, the Attorney General contends that the direct mail solicitations sent by Robinson to Colorado consumers in the form of Exhibit A were misleading and deceptive.

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10. Exhibit A contains the following footnote: “Apex 213 W. Bloomindale, FL 33511 is not endorsed, nor affiliated nor associated with BANK OF COLORADO.” (*Id.*) The address for Apex is incomplete, and the text of the footnote appears in very small font at the bottom of the solicitation. Therefore, the Attorney General contends that this footnote does not disclose that the correspondence came from Robinson instead of the consumer’s lender.

11. The direct mail solicitation also states: “Our records indicate that since your loan funded, there has been a substantial increase in the value of your home. This increase qualifies you for loan terms that were not available when your loan funded.” (*Id.*) However, neither Respondents nor Apex conducted or reviewed current appraisals to determine whether or not each consumer’s home value had substantially increased since the loan funding. Robinson based this assertion on rumor, speculation, or unsubstantiated information instead of factual information.

12. Further, the letter continues that “[a]n internal audit of your file shows that you qualify for these programs.” (*Id.*) As neither Robinson nor Tri-Point nor Apex was the consumer’s lender, the Respondents could not review the consumer’s “file.” While Robinson or Tri-Point’s employees, agents, or independent contractors may have reviewed publicly available information about a consumer’s loan, none of them reviewed consumers’ actual loan files.

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13. Upon information and belief, after receiving the direct mail solicitations, Colorado consumers called the toll-free number contained in the letter and spoke with Respondents about refinancing their mortgage loans.

14. The Attorney General contends that the above misrepresentations and omissions of material facts were misleading and deceptive, may have caused significant financial harm to Colorado consumers, and have the potential to continue.

15. The Attorney General contends that these advertising and sales practices violate the CCPA, including § 6-1-105(1), C.R.S. (2008) and § 38-40-105, C.R.S. (2008).

III. CONSIDERATION

16. Respondents enter this Assurance as a compromise and settlement of the Attorney General's allegations herein. This Assurance shall not be considered an admission of violation for any purpose. Respondents expressly deny liability under the CCPA and are entering into this Assurance to avoid further costs and litigation.

17. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondents arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

IV. DEFINITIONS

18. The term "advertisement" includes all advertisements, marketing or promotional materials issued by Respondents, including but not limited to, newspaper and magazine advertisements, direct mail solicitations, flyers, brochures, emails, faxes, websites,

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telemarketing, billboards, envelopes and banner or pop-up advertising that is disseminated electronically.

19. “Clearly and conspicuously” or “clear and conspicuous” means to emphasize and place any required information or disclosure in equal or greater prominence and in close proximity to the body or text of the advertisement.

20. “Close proximity” shall mean that the information to be disclosed must be immediately adjacent or above the term or phrase that triggers the disclosure requirement.

21. “Emphasize” means that the required information or disclosure must stand out from the rest of the text; for instance, Respondents may bold the required information or disclosure if the rest of the text is not bolded. However, if the majority of the text in the advertisement is bolded, then Respondents must find another way to emphasize the required information or disclosure such as using italics or a different color of ink.

22. “Equal prominence” shall mean that the information to be disclosed must have the same contrast and be in the same font size and typeface as the term or phrase that triggers the disclosure requirement.

V. ASSURANCES

23. Respondents assure the Attorney General that Robinson and any future loan officers, mortgage brokers, salespersons, or other persons having an employment or independent contractor relationship with Respondents, as well as any principals, officers, directors, agents, representatives, successors, affiliates, subsidiaries, assigns, and any person

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acting on Respondents' behalf shall comply with the Assurances set forth in this section V as well as all other applicable laws, rules, and regulations.

A. Robinson Will Comply with Notification Requirements.

24. Robinson agrees that, if he decides to apply for a mortgage broker license, real estate broker license, or appraiser license in Colorado, he will notify the Colorado Division of Real Estate of the existence and terms of this Assurance. Additionally, Robinson agrees to notify the Colorado Attorney General if he intends to or applies for a mortgage broker license, real estate broker license, or appraiser license in Colorado.

25. Respondents agree that they will not disseminate any advertisements to Colorado consumers regarding mortgage loans, including refinancing mortgage loans, unless Robinson or one of Respondent's employees or independent contractors is licensed to originate mortgages in Colorado.

B. Respondents Will Comply with the Advertising Restrictions in Regulation Z.

26. When creating any advertisement, Respondents shall follow the advertising standards set forth in Regulation Z, 12 C.F.R. § 226.24, including the revisions to Regulation Z as proposed by the Federal Reserve Board and published in the Federal Register on January 9, 2008. 73 Fed. Reg. at 1722 - 1724 (proposed new rule found at 12 C.F.R. § 226.24). On July 15, 2008, the Federal Reserve Board adopted the proposed revisions to Regulation Z, which will become effective on October 1, 2009. See 73 Fed. Reg. 44522, 44607 - 44610.

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27. Respondents shall also follow the Official Staff Interpretations for the proposed revisions to Regulation Z's advertising standards, 12 C.F.R. § 226.24, found at 73 Fed. Reg. at 1729 - 1731.

28. Proposed subparagraph 12 C.F.R. § 226.24(f)(4) to Regulation Z, which excludes envelopes, banner advertising and pop-up advertising, shall not apply to exclude this form of advertising from the requirements found in this section V.

29. In the event the Federal Reserve Board ultimately adopts provisions to Regulation Z's advertising standards that are different than those proposed, then Respondents must follow the advertising standards as adopted.

C. Respondents Will Comply with Additional Advertising Restrictions.

30. Respondents must clearly and conspicuously include their mortgage brokerage firm name and current address on all advertisements.

31. Respondents must clearly and conspicuously include the following sentence on all direct mail solicitations: "Please call [1-8xx-xxx-xxxx] to opt out of receiving direct mail advertisements from Corby Robinson, Tri-Point Realty, Criterion Realty, Tri-Point Mortgage, or Tri Point Properties." Respondents must maintain a toll-free telephone number that consumers can call to cease receiving direct mail solicitations from Respondents and include this telephone number in the previous sentence.

32. Respondents shall include the following disclaimer in a clear and conspicuous manner in every advertisement: "This is a solicitation to refinance your home mortgage or

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for a home loan.”

33. Respondents shall not imply that an advertisement is a document from or authorized by the consumer’s lender unless authorized to do so in writing by the consumer’s lender.

34. Respondents shall not use the name of the consumer’s lender in its advertising unless authorized to do so in writing by the consumer’s lender.

35. Respondents shall not state that they reviewed a consumer’s file or request that a consumer contact them in order to update his or her file unless Respondents previously closed a loan for the consumer.

36. Respondents shall not use, as an advertisement, a document in the form of a legal pleading, deed of trust, tax form, or any other governmental- or official-looking form or document.

37. In addition to complying with the above requirements, all of Respondents’ advertisements shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* (“TILA”); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-105, C.R.S. (2008) (“UCCC”); and Rule 8-1-1, Mortgage Broker Advertising, of Colorado Division of Real Estate’s Rules Regarding Mortgage Brokers, 4 CCR 725-3.

VI. ENFORCEMENT

38. The obligations set forth in this Assurance are continuing and apply jointly to Tri-Point and Robinson, who is held personally liable under this Assurance.

39. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by any Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

40. In addition to any remedies provided under the CCPA, the Attorney General will also be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against a Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General's Office of a violation by a Respondent of this Assurance. In such event, Respondents agree to waive any and all defenses and counterclaims they may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

41. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law.

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42. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

43. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

44. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

45. The person who signs this Assurance in a representative capacity for Tri-Point warrants that he or she is duly authorized to do so. Respondents acknowledge that they have had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondents agree and represent that they have read and understand this Assurance, that they accept the legal consequences involved in signing it and that there are no other representations, agreements or understandings between Respondents and the Attorney General that are not stated in writing herein.

46. Respondents and their principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person acting on behalf of Respondents agree to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to enforce the CCPA against any other entity. Included within this cooperation agreement are the obligations to:

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- a) Appear for hearings, depositions or provide testimony in any form, including affidavits. All such testimony shall be truthful;
- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process.

47. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Respondents Corby Wade Robinson and
Tri-Point Realty d/b/a Criterion Realty,
Tri-Point Mortgage, and Tri Point Properties:

3414 FOLSOM BLVD
SAC. CA. 95816

Email: CORBYROBINSON@TRIPONTREALTY.COM

Phone: 916-254-1001

Fax: 916-254-1005


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To The Attorney General at:

Jennifer Miner Dethmers
Assistant Attorney General
Antitrust, Tobacco, and Consumer Protection Unit
Consumer Protection Section
1525 Sherman Street – 7th Floor
Denver, CO 80203
Email: jennifer.dethmers@state.co.us
Phone: (303) 866-2296
Fax: (303) 866-4916


Dated: 11-12-08

RESPONDENTS CORBY WADE ROBINSON AND TRI-POINT REALTY D/B/A
CRITERION REALTY, TRI-POINT MORTGAGE, AND TRI POINT PROPERTIES

By: 
Corby Wade Robinson, personally and as
_____ (title) of Tri-Point Realty
d/b/a Criterion Realty, Tri-Point Mortgage,
and Tri Point Properties

Dated: 11-12-08

JOHN W. SUTHERS
Attorney General

 11-19-08
JENNIFER MINER DETHMERS
Assistant Attorney General
Consumer Protection Section

Loan Auditing Department

888-464-6938

BANK OF COLORADO

Payment Reduction Notification: Audit # CO314085375

March 14, 2008

***** AUTO**ALL FOR AADC 800
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

|||||

Dear [REDACTED],

Our records indicate that since your loan funded, there has been a substantial increase in the value of your home. This increase qualifies you for loan terms that were not available when your loan funded.

An internal audit of your file shows that you qualify for these programs. In order for you to take advantage of these new programs, we need your permission to perform a complete audit so we can adjust your rate. Please call us today.

In order to re-adjust your interest rate, please call:

TOLL-FREE 1-888-464-6938

Sincerely,
Loan Auditing Department

Apex 213 W. Bloomington, IL 61811 is not endorsed, nor affiliated, nor associated with BANK OF COLORADO



EXHIBIT A